

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

JOSE RAMIREZ,
Petitioner,

v.

STEVEN J. O'BRIEN,
Respondent.

CIVIL ACTION NO. 03-40281-FDS

**PETITIONER'S REPLY TO RESPONDENT'S OPPOSITION TO MOTION TO
AMEND THE PETITION FOR WRIT OF HABEAS CORPUS**

The Petitioner is entitled to amend the Petition for Writ of Habeas Corpus as a matter of course as the Respondent has not filed a responsive pleading. Fed. R. Civ. P. 15(a). The Respondent has filed a motion to dismiss, but that does not qualify as a responsive pleading for purposes of Rule 15(a). Dartmouth Review v. Dartmouth College, 889 F.2d 13, 22 (1st Cir. 1989). In addition, the amendment should relate back to the date of the original pleading as the amended pleading involves the same "core of operative facts." Mayle v. Felix, 545 U.S. 644, 664 (2005).

The Petitioner seeks to add Ground Three to his Petition that "Counsel's failure to expressly raise the federal nature of the Petitioner's hearsay claim in his direct appeal denied him his right to effective assistance of counsel." This Ground is based on the same core of operative facts as Ground One that "The admission of hearsay violated the Petitioner's confrontation rights under the United States Constitution." The essence of both of these Grounds is that the admission of certain hearsay evidence violated his rights under the Confrontation Clause of the Sixth Amendment to the United States Constitution. Both Grounds rely on the admission of the hearsay contents of the Petitioner's wallet. The exact

same evidence is at issue in both Grounds. The two Grounds simply present alternative, but closely related, legal theories as to why Petitioner is entitled to a new trial due to the erroneous admission of the same hearsay evidence. The same core of operational facts applies to both of these Grounds.

WHEREFORE, the Petitioner requests that this Court allow the Petitioner to amend the Petition for Writ of Habeas Corpus to include the three Grounds listed in his motion to amend.

Respectfully submitted,
JOSE RAMIREZ
By his attorney,

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Dated: March 20, 2007

Certificate of Service

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on March 20, 2007.

/s/ Alan D. Campbell
Alan D. Campbell